

AUG 31 1979

MICHAEL RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1979

No. 79-178

In re  
HARTFORD TEXTILE CORPORATION,  
OXFORD CHEMICALS, INC.,  
WELLINGTON PRINT WORKS, INC.,  
*Debtors.*

ROSE SHUFFMAN, as Executrix of  
the Estate of OSCAR SHUFFMAN,  
*Petitioner,*

*-against-*

HARTFORD TEXTILE CORPORATION,  
OXFORD CHEMICALS, INC.,  
WELLINGTON PRINT WORKS, INC.,  
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**RESPONDENTS' BRIEF IN OPPOSITION**

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### RESPONDENTS' BRIEF IN OPPOSITION

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#### Opinions Below

Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, deceased ("Petitioner"•), seeks the issuance of a writ of certiorari to the United States Court of Appeals for

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• As used herein, "Petitioner" shall refer to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, deceased and the late Oscar Shuffman.

the Second Circuit ("Second Circuit"), from that Court's *per curiam* order dated December 6, 1978. The decision and order of the Second Circuit is reported at 588 F.2d 862 and is reprinted in the Petitioner's Appendix.\* (Appendix at 77). The order affirmed an order of the United States District Court for the Southern District of New York ("District Court"), dated February 22, 1978. (Appendix at 36). The order of the District Court, in turn, affirmed the amended order of the bankruptcy court dated August 26, 1977. (Appendix at 29).

### **Jurisdiction**

Although Petitioner states that jurisdiction is invoked under 28 U.S.C. § 1254(1), presumably Petitioner also invokes jurisdiction under Section 24c of the Bankruptcy Act, 11 U.S.C. § 47c.

### **Questions Presented**

1. Did the Second Circuit err in affirming the determination by two lower courts that pursuant to the plain language of certain supply contracts (the "Supply Contracts"), with Hartford Textile Corporation, Oxford Chemicals, Inc. and Wellington Print Works, Inc., Respondents (hereinafter collectively referred to as "Hartford"\*\*), Petitioner's claim for finder's fees against Hartford is limited to the value of goods (vinyl) actually delivered to, and accepted by Hartford.

2. Is the finding of the bankruptcy court that the finder's fees owing to Petitioner for goods actually received and accepted prior to Chapter XI amounted to \$1,032.67, clearly erroneous?

\* All references to "Appendix" refer to the appendices annexed to the petition for a writ of certiorari (the "Petition") submitted by Petitioner.

\*\* By order dated June 24, 1974, the separate Chapter XI cases relating to Hartford Textile Corporation, Oxford Chemicals, Inc. and Wellington Print Works, Inc. were substantively consolidated and their respective assets and liabilities pooled for the purposes of Chapter XI.

3. Assuming, *arguendo*, that Petitioner was entitled to finder's fees in respect of all the goods that were originally contemplated by the Supply Contracts, did the bankruptcy court err in determining that Petitioner could not amend her claim two years after confirmation of the Chapter XI case so as to assert priority as an expense of administration of the Chapter XI case?

### **Statement of the Case and Supplemental Statement of Facts**

Petitioner's contentions with respect to the instant Petition are wholly devoid of merit. Each of the courts below has determined that Petitioner was entitled to finder's fees only for vinyl actually delivered and accepted under the Supply Contracts. In addition, under the express terms of the Supply Contracts, Hartford was not required to accept vinyl nor was it required to enforce the suppliers' obligations to deliver vinyl. Indeed, even if Hartford had continued to receive vinyl under the Supply Contracts after the Chapter XI petition, Petitioner's claim for finder's fees would be a general unsecured claim in the Chapter XI case, provable and dischargeable in bankruptcy. (Appendix at 80-81).

In order to demonstrate the reasons why the petition for a writ of certiorari should be denied, Respondents, pursuant to Supreme Court Rule 24, deem it appropriate to supplement Petitioner's presentation of the evidence and description of the proceedings below.

### **The Petitioner's Claim**

Prior to the date of confirmation of the consolidated Chapter XI cases,\* Petitioner filed a general unsecured claim in the amount of \$80,000 based upon finder's fees allegedly owed to Petitioner by Hartford. On November 1, 1974, Hartford objected to the allowance of Petitioner's claim. Hartford's objection was premised on the fact that regardless of whether the Supply Contracts had terminated, its only

\* By order of the bankruptcy court dated September 5, 1974 the Hartford Chapter XI plan was confirmed.



obligation to Petitioner was for finder's fees for vinyl actually delivered and accepted. Having been paid finder's fees for all vinyl actually delivered to and accepted by Hartford under the Supply Contracts, Petitioner has sought additional moneys by asserting that she is entitled to finder's fees for all vinyl that might have been purchased by Hartford as originally contemplated by the Supply Contracts irrespective of whether or not actually purchased, delivered and accepted. Petitioner's contention is spurious.

### Termination of the Supply Contracts

For approximately two years prior to Chapter XI, Hartford accepted vinyl under the Supply Contracts and paid the applicable finder's fees to Petitioner. Shortly before Chapter XI, however, and because of its financial difficulties, Hartford defaulted in the payment to its suppliers for vinyl delivered under the Supply Contracts. As a consequence of Hartford's defaults under the Supply Contracts, the suppliers refused to deliver additional vinyl to Hartford and terminated their respective Supply Contracts. No goods were delivered to Hartford under the Supply Contracts after the filing of the Chapter XI petition. (Appendix at 79).

By its express terms, Hartford's agreement with Petitioner conditioned any obligation to pay finder's fees, upon delivery and Hartford's actual acceptance of vinyl:

"It is understood that if for any reason we [Hartford] do not call for delivery of the full quantity ordered, or if for any reason [the supplier] fails to deliver any part of said orders, you are not to receive a finder's fee on the undelivered quantities, and that you are to be compensated only on the delivered and accepted quantities.

We may refuse, reject or consent to cancel either in whole or in part said orders either before or after shipment of merchandise, without obligation to you."

The bankruptcy court determined that Petitioner was only entitled to finder's fees under the Supply Contracts for vinyl delivered and received prior to their termination. (Appendix at 80).

### The Settlement Agreement

During the course of the Chapter XI case, Hartford, as debtor-in-possession, disputed the termination of the Supply Contracts. After extensive negotiations, Hartford entered into a settlement agreement with one of the suppliers whereby the supplier agreed to deliver vinyl to Hartford, in substantially lower grades and quantities, and at substantially higher prices than under the Supply Contracts (the "Settlement Agreement"). (Appendix at 79).

While in Chapter XI, Hartford, as debtor-in-possession, paid commissions to Petitioner for vinyl received by it under the Settlement Agreement. As a result, and in accordance with the bankruptcy court's amended order dated August 26, 1977, payment has been tendered to Petitioner for all finder's fees to which Petitioner is entitled either under the Supply Contracts or the Settlement Agreement. (Appendix at 81-82). Nevertheless, Petitioner continues to challenge the bankruptcy court's amended order claiming that she is entitled to *all finder's fees which would have been paid* under the Supply Contracts had they not been terminated and all vinyl products described therein had actually been delivered to and accepted by Hartford. This argument, having neither factual nor legal basis, was completely rejected by the Second Circuit:

"The bankruptcy court interpreted [Petitioner's] agreement with Hartford to entitle [Petitioner] to commissions only on goods actually received and accepted by Hartford. We agree. The agreement is unambiguous and permits no other interpretation. See *Glen Manufacturing, Inc. v. Perfect Fit Industries, Inc.*, 299 F. Supp. 278, 281 (S.D.N.Y. 1969)..."

(Appendix at 80).

### The Decisions Below

In its decision dated June 1, 1977, the bankruptcy court demonstrated its complete consideration of all the issues before it. The Bankruptcy Judge's extensive findings of fact and conclusions of law were based upon a thorough review of

all pleadings, affidavits, memoranda of law, the transcript of the evidentiary hearing conducted before him on December 20, 1976 and the testimony of an officer of Hartford. (Appendix at 2). In its order dated February 22, 1978, affirming the bankruptcy court's decision in all respects, the District Court concurred with the bankruptcy court's findings and conclusions. (Appendix at 36). In its *per curiam* decision and order dated December 6, 1978, the Second Circuit affirmed in all respects the order of the District Court affirming the amended order of the bankruptcy court reducing Petitioner's claim. In addition, the Second Circuit affirmed three District Court orders denying Shuffman's motions for rehearing. In rendering its decision, the Second Circuit concluded as follows:

"With respect to the appeal on the merits from Judge Bricant's order of February 22, 1978, we conclude, despite the voluminous and vitriolic protestations of appellant's counsel, that appellant's rights in the Chapter XI proceeding were recognized and protected; and the order appealed from is affirmed."

(Appendix at 84) (footnote omitted).

#### **No Sound Basis Exists for the Issuance of a Writ of Certiorari**

Petitioner has gone to great lengths in the Petition to demonstrate to the Court that legal issues exist herein that mandate granting a writ of certiorari. In fact, however, the Petition only demonstrates that the sole issue before this Court concerns the factual determinations made by the bankruptcy court as affirmed by both the District Court and the Second Circuit. Petitioner's refusal to accept the finality of the orders of the District Court and Second Circuit affirming the decision of the bankruptcy court is the sole basis of the Petition. Petitioner's reluctance is best evidenced by the history of the proceedings below.

By order dated March 5, 1979, the Second Circuit denied the petition for rehearing of the December 6, 1978 *per curiam* decision and order. On the same day, the Second Circuit

denied Petitioner's separate motion to vacate the *per curiam* decision. A subsequent motion by Petitioner for "Reconsideration of and/or Explanation of Per Curiam Opinion" was dismissed by the Second Circuit as repetitive.

Petitioner has not, however, limited her efforts to circumvent the outcome of the appeal to motions before the Second Circuit. To date, Petitioner has moved for reargument of the District Court's order dated February 22, 1978 on at least ten occasions.\* As a consequence of these repetitive motions, Petitioner has also filed at least nine separate appeals to the Second Circuit arising out of the same facts and circumstances. Of the nine appeals filed, four were disposed of by the *per curiam* decision and order dated December 6, 1978 and three subsequent appeals were dismissed on motion by the Respondents. In addition, Respondents' motions to dismiss the remaining two appeals to the Second Circuit are presently pending. Thus, both the District Court and the Second Circuit have rejected each and every attempt by Petitioner to circumvent the outcome of the principal appeal. Both courts have determined that Petitioner's rights and interests were carefully considered and fully protected. While creating a procedural morass in the courts below, Petitioner has been unable to demonstrate any legal basis to overturn the decisions. None exists.

The Petition provides no substantiation whatsoever upon which a writ of certiorari may be granted herein. Rather, as they have been throughout the history of this case, Petitioner's arguments are comprised of conclusory statements and allegations that are wholly unsupported.

The considerations governing review on certiorari, set forth in this Court's Rule 19.1(b), though not limiting the discretion of the Court, do support a denial of certiorari here.

\* On March 28, 1978, June 8, 1978, July 13, 1978, September 13, 1978, November 22, 1978, December 21, 1978, February 6, 1979, March 28, 1979, May 1, 1979 and June 6, 1979, Petitioner appeared before the District Court requesting, *inter alia*, an order granting reargument of the order dated February 22, 1978. Each motion for reargument was denied in all respects.

No conflict exists between the Second Circuit's decision and the decisions of this Court or other courts of appeals. The Second Circuit's *per curiam* decision is based on clear, simple and well-established principles of law. Significantly, the *per curiam* decision deals with no important question of Federal law which has not already been, but should be, settled by this Court. Petitioner has failed to cite, as indeed she cannot, any applicable cases to demonstrate otherwise. This is because Petitioner's dispute is with the factual determinations made by the courts below rather than the legal conclusions.

Three courts have examined the facts herein, and each has determined that those facts conclusively demonstrate "that appellant's rights in the Chapter XI proceeding were recognized and protected. . ." (Appendix at 84). As Mr. Justice Holmes wrote in *United States v. Johnston*, 268 U.S. 220, 227 (1925):

"We do not grant a certiorari to review evidence and discuss specific facts."

The record could not better amplify that the courts below were correct in their findings and conclusions and that no basis exists for further consideration by this Court.

## CONCLUSION

For the reasons stated, the petition for a writ of certiorari to the Court of Appeals for the Second Circuit should be denied in all respects.

Dated: New York, New York  
August 31, 1979

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